

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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GEORGE LUSTER,

Plaintiff,

vs.

WARDEN JAMES SCHOMIG, et al.,

Defendants.

) 2:04-cv-00281-LRH-LRL

) ORDER

Before the court is Defendant's Motion to Dismiss/Motion for Summary Judgment (#31). Plaintiff has filed an opposition to a Motion to Stay Discovery (#34) by Defendants which, due to Plaintiff's pro se status, the court will treat as an opposition to Defendants' Motion to Dismiss/Motion for Summary Judgment (#31). Defendants' Motion to Stay Discovery (#32) was denied by Order (#33).

It appears from Plaintiff's opposition/response to Defendants' Motion to Stay Discovery that there are genuine disputes of fact concerning the actual usage of the lighting in inmates' cells and the extent to which Plaintiff may have complained concerning headache and vision problems arguably related to Plaintiff's contention that cell lighting is inadequate. Further disputes appear to exist concerning the extent to which complaints and grievances have been properly presented and exhausted by Plaintiff.

This action appears to be one in which there are genuine disputes of fact, discovery is incomplete, and Defendants' Motion to Dismiss/Motion for Summary Judgment (#31) should be denied without prejudice to raising similar challenges upon completion of discovery.

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2 Good cause appearing, Defendants' Motion to Dismiss/Motion for Summary Judgment
3 (#31) is DENIED.

4 IT IS SO ORDERED.

5 DATED this 26th day of March, 2007.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE